IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE C.NAGAPPAN

A.S.No.659 of 1995

Nachayal .. Appellant

-Vs-

1.Pongiannan
S/o.Palani Gounder

2.Kuppayal
W/o.Palani Gounder

3.Chinnammal
4.Rathinammal
5.Ramayal
6.Ponayal alias Chinnammal
7.Pappal
8.Pachayal alias Kunjayal
9.Ammasaiakkal
10.Sundarayal
11.Deivasigamani
12.Parameswaran

(Respondents 3 to 12
exparte in the lower court.
Hence given up). .. Respondents

Appeal against the judgment and decree dated 23.11.1994 made in O.S.No.225 of 1990 on the file of Principal Subordinate Judge, Erode, Periyar District.

For appellant : Mr.A.K.Kumaraswamy
For respondents : No appearance for R1 and R2.
(R3 to R12 given up).

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JUDGMENT

The Appeal is preferred against the judgment and decree dated 23.11.1994 rendered in O.S.No.225 of 1990 on the file of Principal Subordinate Judge, Erode. The plaintiff in the suit is the appellant herein.

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2. The plaintiff filed the suit seeking for a decree directing the division of the suit properties into 27 equal shares by metes and bounds and allot 10 such shares to the plaintiff and put her in separate possession thereof.

The case of the plaintiff is that her father Palani Gounder had two wives, namely, Thangammal and Kuppayal, the second defendant in the suit and the plaintiff and defendants 5 to 7 are the daughters of first wife Thangammal while the defendants 8 to 12 are the daughters and sons of the predeceased daughter of Thangammal by name Mottaiakkal alias Karuppathal and the first defendant is the son of Palani Gounder through his second wife Kuppayal and the defendants 3 and 4 are the daughters of Palani Gounder through Kuppayal. According to the plaintiff, the entire suit properties were the joint family properties of Palani Gounder, the first defendant and the plaintiff, who is an unmarried daughter of Palani Gounder and Palani Gounder died on 27.3.1975 and the entire suit properties remain undivided by metes and bounds and the plaintiff, who is an unmarried daughter of late Palani Gounder, became a co-parcener and member of the joint family as per the provisions of Hindu Succession (Tamil Nadu Amendment) Act 1989 and was entitled to 1/3 share in the suit properties, similarly, her father Palani Gounder and the first defendant are entitled to 1/3 share each and after the death of Palani Gounder, his 1/3 share would devolve upon the plaintiff, defendants 1 to 7 and defendants 8 to 12 jointly in equal moities and the plaintiff would get 10/27 shares, the first defendant would get 10/27 shares and defendants 2 to 7 would get 1/27 share each and defendants 8 to 12 would jointly get 1/27 share in the suit properties. It is further stated by the plaintiff that the first defendant has filed another suit for declaration and other reliefs in O.S.No.636 of 1989 on the basis of alleged Will executed by late Palani Gounder on 16.6.1966. According to the plaintiff, that Will is not true, valid and genuine and even assuming it to be true, it would not bind the plaintiff's 1/3 share and hence the suit.

3. The first defendant filed an elaborate written statement stating that he and his father late Palani Gounder were members of Hindu joint family and Palani Gounder and his four brothers divided their ancestral joint family properties under registered partition deed dated 9.9.1921 and Palani Gounder was allotted a share and he also purchased some lands from the income of ancestral properties and all the properties were treated as joint family properties and Palani Gounder celebrated the marriage of his six daughters by giving customary seers and jewels and he also executed a Will on 16.6.1966. It is further stated by the first defendant that Palani Gounder died on 27.3.1975 and after his death, Thangammal, senior wife and mother of the plaintiff took possession of the properties given to her under the Will and she was residing in one of the houses and enjoying the income from the landed properties till she died on 1.11.1989 and afterwards, the first defendant became entitled to the properties absolutely. According to the first defendant, the right claimed by the plaintiff under the Tamil Nadu Amendment Act 1/1990 is

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misconceived since there was no coparcenary on the date when the Tamil Nadu Amendment Act came into effect. The first defendant has further stated that on the death of Palani Gounder, the coparcenary consisting of himself and his only son came to an end as per Section 6 of the Hindu Succession Act and the partition took effect under Explanation to Section 6 and there was no joint family subsequently since by operation of the statute, a complete partition took effect on the death of Palani Gounder. It is further stated by the first defendant that the Tamil Nadu Amendment Act 1/1990 is prospective in nature and to claim the benefit of the same, there should be a coparcenary consisting of father/Kartha, son and unmarried daughter and that is not the case herein and hence the plaintiff is not entitled to the benefit of the Tamil Nadu Amendment Act 1/1990. The first defendant has further stated that the plaintiff along with others has filed another suit in O.S.No.636 of 1989 for declaration and injunction and afterwards, the present suit came to be filed and hence it is barred.

4. The Trial Court conducted the joint trial of the suits in O.S.Nos.636 of 1989, 202 of 1990 and 225 of 1990 and a common judgment was rendered, in which, the suit in O.S.No.225 of 1990 came to be dismissed without costs. The plaintiff in O.S.No.225 of 1990 has preferred the present appeal. No appeal came to be preferred against the decisions rendered in the other two suits. For the sake of convenience, in this Judgment, the parties are referred to as arrayed in the suit in O.S.No.225 of 1990. The respondents remain absent in this appeal.

5. The points for determination in this appeal are:

1. Whether the plaintiff is entitled to the benefit conferred in Tamil Nadu Amendment Act 1/1990.

2. Whether the plaintiff is entitled for a decree for partition as prayed for.

POINT NOS. 1 AND 2.

6. The specific case of the plaintiff is that the suit properties remain undivided and the plaintiff, who is the unmarried daughter of late Palani Gounder, is a coparcener and as per the provisions of Hindu Succession (Tamil Nadu Amendment) Act 1/1990, she is entitled to 1/3 share in the suit properties and her father Palani Gounder and first defendant are entitled to 1/3 share each. The said claim is contested by the first defendant on the ground that the Tamil Nadu Amendment Act 1/1990 is prospective and in order to claim the benefit of the Act, there should be a coparcenary consisting of father/Kartha, son and unmarried daughter and if the father/Kartha had died prior to 25.3.1989, the unmarried daughter cannot claim the status of coparcener and Palani Gounder died on 27.3.1975 and on his death, the coparcenary consisting of himself and his only son came to an end under Section 6 of the Hindu Succession Act and a partition took effect as per Explanation 1 to Section

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6 of the Act and therefore the plaintiff is not entitled to claim the benefit of Tamil Nadu Act 1/1990.

7. Mr.A.K.Kumaraswamy, the learned counsel for the appellant/plaintiff, brought to the notice of this Court three decisions in this regard. The first decision is SUNDARAMBAL AND OTHERS v. DEIVANAYAGAM AND OTHERS (1991-1-L.W. 97). M.Srinivasan, J. [as he then was] considered the scope of Section 29-A of the Hindu Succession Act as introduced by Tamil Nadu Amendment Act 1/1990 and held as follows:

> "15. ..... Under Sub-clause (1), the daughter of a coparcener shall become a coparcener in her own right by birth, thus enabling all daughters of a coparcener who were born even prior to 25th March 1989 to become coparceners. In other words, if a male Hindu has a daughter born on any date prior to 25th March 1989, she would also be a coparcener with him in the joint family when the Amendment came into force. But the necessary requisite is, the male Hindu should have been alive on the date of the coming into force of the Amendment Act. .....
>
> The position under sec.29-A will reduce to this. All daughters of a male coparcener will become coparceners entitled to a share with him, if the coparcener had been alive on 25.3.1989. Even among such daughters if any daughter has been married before 24.3.1989, she will not be entitled to claim a share as a coparcener. If there had been a partition in the family before 25.3.1989, that partition will not be affected by the provisions of the Amendment Act. In that event also, the daughter of a coparcener will not be entitled to claim a share as coparcener from the date of her birth and reopen the partition already effected."

8. While considering the scope of the Amendment Act, the learned Judge did not agree with the reasoning made in the decision of Andhra Pradesh High Court in S.NARAYANA REDDY v. SAI REDDY (A.I.R. 1990 Andhra Pradesh 263) and held that in a case where the preliminary decree has become conclusive and the shares of the parties are crystalised there is no provision or method by which the partition can be reopened and a higher share can be granted to one of the sharers and reduce the shares of the other sharers.

9. The Supreme Court considered the appeal filed against the above decision of the Andhra Pradesh High Court in S.SAI REDDY v. S.NARAYANA REDDY AND OTHERS ((1991) 3 Supreme Court Cases 647) and the Apex Court affirmed the decision of the High Court and laid down the law as follows:

> "7. ..... Thus if prior to the partition of family property a daughter had been married, she was disentitled to any share in the property. Similarly, if the partition had been effected before September 5, 1985 the date on which the amending Act came into force, the daughter even though unmarried was not given a share in the family property. The

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crucial question, however, is as to when a partition can be said to have been effected for the purposes of the amended provision. A partition of the joint Hindu family can be effected by various modes, viz., by a family settlement, by a registered instrument of partition, by oral arrangement by the parties, or by a decree of the court. When a suit for partition is filed in a court, a preliminary decree is passed determining shares of the members of the family. The final decree follows, thereafter, allotting specific properties and directing the partition of the immovable properties by metes and bounds. Unless and until the final decree is passed and the allottees of the shares are put in possession of the respective property, the partition is not complete. The preliminary decree which determines shares does not bring about the final partition. For, pending the final decree the shares themselves are liable to be varied on account of the intervening events. In the instant case, there is no dispute that only a preliminary decree had been passed and before the final decree could be passed the amending Act came into force as a result of which clause (ii) of Section 29-A of the Act became applicable. This intervening event which gave shares to respondents 2 to 5 had the effect of varying shares of the parties like any supervening development. Since the legislation is beneficial and placed on the statute book with the avowed object of benefitting women which is a vulnerable section of the society in all its stratas, it is necessary to give a liberal effect to it. .....

8. Hence, in our opinion, the High Court has rightly held that since the final decree had not been passed and the property had not been divided by metes and bounds, clause (iv) to Section 29-A was not attracted in the present case and the respondent-daughters were entitled to their share in the family property."

10. Later, a Division Bench of this Court consisting of Srinivasan and Thangamani, J J., in the decision in M.SHANMUGHA UDAYAR v. SIVANANDAM AND 8 OTHERS (1993 - 2 - L.W. 72), followed the above law laid down by the Supreme Court and held that the unmarried daughter, who was the tenth defendant in the suit, is entitled to a share equal to that of a son.

11. The law is settled that if the partition had been effected before the Amendment Act came into force, the daughter even though unmarried, is not entitled for a share in the family property. It is seen that in the cases decided by the Apex Court and by the Division Bench of this Court, the daughter of a coparcener became a coparcener in her own right, since the coparcener was alive on the date of coming into force of the Amendment Act and in those circumstances, when a partition was not effected, it is held that unmarried daughter shall become coparcener in the same manner as a son. In the present case, Palani Gounder died on

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27.3.1975, well before the coming into force of the Tamil Nadu Amendment Act 1/1990, namely, 25.3.1989 and hence the plaintiff, viz., his unmarried daughter, cannot claim to be a coparcener in the same manner as a son as on the date of coming into force of the Amendment Act. The finding of the Trial Court that the plaintiff is not entitled to the benefit conferred in Tamil Nadu Amendment Act 1/1990, is correct and proper. Hence, the plaintiff is not entitled for a decree for partition as prayed for. The Points are answered against the appellant.

12. There are no merits in the appeal and the same is dismissed. However, considering the fact that the respondents have not entered appearance in the appeal, there shall be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Vks.

To

1. The Principal Subordinate Judge,
Erode, Periyar District.

2. The Section Officer,
V.R.Section, High Court,
Madras.

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